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OFFICE OF PETITIONS

In re Application of
Joseph V. Simmons et al
Application No. 09/976,187
Filed: October 12, 2001
Attorney Docket No. 3201.2.1

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: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)
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This is a decision on the petition under 37 CFR 1.78(a)(6), filed February 24, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of a prior-filed provisional application.

The petition is **Granted**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the surcharge set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(i) and the date the claim was filed was unintentional; and
- (3) the reference to the prior-filed provisional application supplied in an application data sheet (ADS)(37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5)(iii). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on October 12, 2001 within twelve months of the filing date of the prior-filed provisional application, Application No. 60/240,197, which was filed on October 12, 2000, and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the


nonprovisional application for which the benefit is sought. See 35 U.S.C. § 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/240,197 is granted.

The granting of the petition to accept the delayed benefit claim to the prior application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior application. In order for the instant application to be entitled to the benefit of the prior application, all other requirements under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The application is being forwarded to Technology Center AU 2123 for processing the amendment filed February 24, 2003, and for consideration by the examiner of applicant's entitlement to claim for benefit of priority under 35 U.S.C. § 119(e) to prior-filed provisional Application No. 60/240,197, filed October 12, 2000.


Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt